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D.R. Horton, Inc., DHI Mortgage Company, Ltd.;  
Donald Horton, Donald Tomnitz, Michael Mason,  
Daniel Callihan, Annie Schankin and James Frasure

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

PATRICE A. MISSUD, JULIE D.  
MISSUD,

Plaintiff,

vs.

D.R. HORTON, INC.; DHI MORTGAGE  
COMPANY, LTD, LP.; DONALD  
HORTON; DONALD TOMNITZ;  
MICHAEL MASON; DANIEL  
CALLIHAN; ANNIE SCHANKIN;  
JAMES FRASURE; and DOES 1-200,

Defendants.

Case No. C07-2625 SBA

**AMENDED NOTICE OF MOTION AND  
MOTION TO DISMISS**

**[Fed. R. Civ. Proc. 12(b)(2), (6)]**

Date: October 23, 2007  
Time: 1:00 p.m.  
Judge: Hon. Sandra B. Armstrong

**AMENDED NOTICE OF MOTION AND MOTION TO DISMISS**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 23, 2007, at 1:00 p.m., or as soon thereafter as the matter may be heard before the Honorable Sandra B. Armstrong, in Courtroom 3, 3rd Floor, United States District Court, 1301 Clay Street, Oakland, California, defendants D.R. Horton, Inc., DHI Mortgage Company, Ltd., Donald Horton, Donald Tomnitz, Michael Mason, Daniel Callihan, Annie Schankin and James Frasure (collectively, the "Defendants"), will and hereby do move this Court for an order dismissing plaintiffs Patrice A. Missud and Julie D. Missud's (collectively, the "Plaintiffs") complaint as against the moving Defendants pursuant to Rule 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure.

This motion is based upon this Amended Notice of Motion and Motion to Dismiss and the Memorandum of Points and Authorities, the Declarations of David Morice, James Frasure, Daniel Callihan, Michael Mason, Annie Schankin and Gillian M. Ross, the Request for Judicial Notice and the original Notice of Motion and Motion to Dismiss filed on July 30, 2007 in support hereof, the Reply Brief filed on September 5, 2007, the Objections to Evidence filed on September 5, 2007, the Supplemental Objections to Evidence filed on September 7, 2007 and the Second Supplemental Objections to Evidence filed on September 7, 2007, all pleadings and papers filed herein and upon such further argument and evidence as may be presented at the hearing on this motion.

This motion is made on the grounds that there is no personal jurisdiction by this Court over Defendants with respect to the claims alleged by the Plaintiffs in the pending complaint and that Plaintiffs are collaterally estopped from re-litigating the issue of personal jurisdiction in this Court. Defendants request that the Court dismiss Plaintiffs' complaint pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure for lack of personal jurisdiction over the Defendants. In the alternative, Defendants request that the Court dismiss the pending complaint against all Defendants on the grounds of *forum non conveniens*.

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1 This motion is also made on the grounds that Plaintiffs' complaint fails to state a viable  
2 claim for relief in that Plaintiffs' first, second, third, sixth and seventh causes of action are all  
3 time barred by the applicable state law statute of limitations and, therefore, fail to state facts  
4 sufficient to state a claim against Defendants. Because Plaintiffs have failed to state facts  
5 sufficient to state a claim against Defendants, Defendants request that said claims be dismissed  
6 with prejudice as against each of them, pursuant to Rule 12(b)(6) of the Federal Rules of Civil  
7 Procedure.

8  
9 Dated: September 13, 2007

WENDEL, ROSEN, BLACK & DEAN LLP

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11 By: /s/ Gillian M. Ross

Gillian M. Ross  
Attorneys for Defendants  
D.R. Horton, Inc., DHI Mortgage  
Company, Ltd., Donald Horton, Donald  
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